IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of Decision: 29.08.2006

Civil Revision No. 372 of 2001
(Old No. 337 of 2000)

Shri Chaman Lal
S/o Shri Ram Chand
R/o Maheshpur
Tehsil Gadarpur
District Udham Singh Nagar …….Plaintiff/Revisionist

Versus

Shri Raj Kumar Sachdeva
S/o Karam Chand Sachdeva
Through Sachdeva Pustak Bhandar
Bhagat Singh Chowk, Rudrapur
District Udham Singh Nagar…..Defendant/Respondent

Shri K.N. Joshi, Advocate for plaintiff/revisionist.
Shri B.C. Pande, Sr. Advocate with Shri Naresh Pant, Advocate for the defendant/respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 29.08.2006

Note:- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Hon'ble Prafulla C. Pant, J.

This revision has been filed by the plaintiff/landlord under Section 25 of Provincial Small Cause Courts Act, 1887, challenging the judgment and decree dated 20.07.2000 passed in S.C.C. suit No. 04 of 1997 by Judge, Small Cause Court/District Judge, Nainital, whereby the plaintiff's suit has been dismissed with costs.

2. I heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that a one-room house consisting of a shop, situated in Rudrapur, the boundaries of which are detailed in the plaint, was owned by the one late Shri Dwaraka Dass. Said Dwaraka Dass let out the shop to defendant Raj Kumar Sachdeva on a rent at the rate of Rs. 200/- per month. It is pleaded in the plaint that after the death of Dwaraka Dass, his widow Radha Rani and his daughters became owners and landlord of the shop. Plaintiff has pleaded that on 21.09.1994, he purchased the house in suit from them (Radha Rani and her daughters) and became owner and landlord thereafter. As per the plaint case, at the time when the plaintiff Chaman Lal, purchased the house, the rate of rent had already increased to Rs. 700/- per month. It is pleaded in the plaint that the rent on said rate i.e. Rs. 700/- per month from September, 1994, was demanded from the defendant/tenant through a notice dated 07.09.1996, in reply to which he (defendant) got sent arrears of rent at the rate of Rs. 200/- per month from September, 1994 to September, 1996 through cheque No. 008610, dated 14.10.1996. The plaintiff did not accept the same and got it returned to the defendant. Again through a notice dated 13.01.1997, plaintiff demanded arrears of rent for a period from September, 1994 to December 1996, amounting to Rs. 19,600/- and also terminated the tenancy of the defendant by serving him one month notice. In reply to this notice, again denying the liability to pay the rent at the rate of Rs. 700/- per month, defendant got sent another cheque

No. 008627 dated 03.02.1997, offering payment of rent at the rate of Rs. 200/- per month. On this, plaintiff filed the S.C.C. suit No. 04 of 1997, for ejectment of the defendant and for recovery of arrears of rent and mesne profits.

4. The defendant contested the suit and filed the written statement. In the written statement, it is admitted that the shop in question belonged to late Shri Dwaraka Dass and the defendant was inducted as tenant by him. Rest of the contents of the plaint, as pleaded were not admitted. In the additional pleas, it is pleaded by the defendant that he does not want to create any dispute, as to the ownership of the plaintiff but it is categorically pleaded that the plaintiff is alleging rate of rent to be Rs. 700/- per month only to make a ground to eject the defendant. It is further pleaded in the written statement that the actual rate of rent is Rs. 200/- per month, which he always offered to pay and made the payment. But the plaintiff did not accept the same. It is specifically pleaded that the defendant is not the defaulter in payment of rent. Apart from filing the written statement, an application 27-C was moved before the trial court on 20.04.1998 by the defendant, seeking protection of sub-section (4) of Section 20 of U.P. Act 13 of 1972, stating that he is depositing, unconditionally, the entire rent due with interest and costs on the first date of hearing so that the decree of ejectment, as against him may not be passed. Learned Judge, Small Cause Court, recorded

the evidence, adduced by the parties and heard them. It dismissed the suit for ejectment vide judgment and order dated 20.07.2000, deciding all the three points of determination in favour of the defendant. The point of determination are enumerated by the trial court in its judgment as under:-

1. *What is the rate of rent, whether Rs. 200/- or Rs. 700/- per month?*
2. *Whether the defendant had committed default in payment of rent by not remitting taxes to the plaintiff?*
3. *Whether the defendant has deposited the entire amount on the first date of hearing and is he entitled to get benefit of Section 20(4) of U.P. Act No. 13 of 1972?*

On the aforesaid points of determination, the trial court has held that rate of rent was Rs. 200/- per month and not Rs. 700/- per month, as alleged by the plaintiff. It further found that there is no default, committed by the defendant in payment of rent. Also, the trial court found that in view of the fact that defendant has deposited rent due, with interest and costs before the first date of hearing, as such, he is entitled to the benefit of sub-section (4) of Section 20 of U.P. Act No. 13 of 1972. With said findings, learned Judge, Small Cause Court, dismissed the suit.

5. Before further discussions, it is pertinent to mention here the relevant provisions of law applicable to the case. Sub-section 2(a) and sub-section (4) of

Section 20 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972), reads as under:-

"(2) A suit for eviction of a tenant from a building after the determination of the tenancy may be instituted on one or more of the following grounds, namely:

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand……..

(4) In any suit for eviction on the ground mentioned in clause (a) of sub-section (2), if at the first hearing of the suit the tenant unconditionally pays or tenders to the landlord or deposits in Court the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation of being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground.

Provided that nothing in this sub-section shall apply in relation to a tenant who or any member of whose family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any

residential building in the same city, municipality, notified area or town area.

Explanation- For the purposes of this sub-section-

(a) the expression 'first hearing' means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression 'cost of the suit' includes one-half of the amount of counsel's fee taxable for a contested suit."

6. From the perusal of the pleading of the parties and evidence on record, it is clear that the sole ground seeking ejectment is the default in payment of rent on the part of the defendant. The order sheet of the lower court, shows that suit was instituted on 01.04.1997 and summons were issued fixing 14.05.1997 by the court. On 14.05.1997, learned Judge, Small Cause Court, observing that the defendant is not served sufficiently, directed the plaintiff to take fresh steps and directed that summons be issued, fixing 08.07.1997. Though the Judge, Small Cause Court observed on 14.05.1997 that the defendant was not served by that day but said observation is erroneous in law. It is clear from the record that before that first date of hearing, the defendant, after service of summons, moved application seeking protection under Section 20(4) of U.P. Act 13 of 1972, from ejectment, on the ground he is ready to pay rent due, interest thereon and the costs of the suit, but he actually

deposited said amount on 30.05.1997, i.e. much after first date of hearing – 14.05.1997. As such the trial court has erred in law that in holding that defendant made sufficient deposits before first date of hearing. Paper No. 28 C/3, contains chalan No. 13 of the deposit made by defendant of Rs. 10,000/- on 30.05.1997 towards the rent due with interest and costs of the suit. The said deposit being after the first date of hearing, does not make defendant entitled to protection of Sub-section (4) of Section 20 of U.P. Act. 13 of 1972 and this Court is not in agreement with the finding given by the trial court in this regard (that is on the point of determination No. 3). And the finding on said point is reversed.

7. Learned counsel for the revisionist, argued that there is no mention of making deposit of water tax or house tax by the defendant in the aforesaid chalan. In this connection, attention of this Court is drawn to the provision contained in Section 7 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which provides that subject to any contract in writing to the contrary, the tenant shall be liable to pay to landlord in addition to and as part of the rent, water tax and 25% of the every enhancement in the house tax. In this connection, on behalf of the plaintiff/revisionist, this Court's attention is drawn towards the principle of law laid down in Jwala Prasad Jain Vs. IVth Additional District Judge, Etah 1985 (1) Allahabad Rent Cases Pg. 201 and also to the one laid

down in Abdul Alim Vs. District Judge, Jhansi 1996 (2) Allahabad Rent Cases Pg. 44. From the provision of Section 7 of U.P. Act No. 13 of 1972 and the case law referred, it is clear that the water tax and part of the house tax, payable by the tenant is no doubt part of the rent. However, what distinguishes this case from the cases referred above is this that in the present case, the plaintiff has neither disclosed amount of water tax or house tax, payable by the tenant, in the notice nor in the plaint. In the circumstances, it cannot be said that non payment of water tax and house tax on the part of the defendant in the above circumstances is fatal to his defence in this case.

8. On behalf of the revisionist, it is also argued that trial court has erred in law in holding that rate of rent is Rs. 200/- per month and not Rs. 700/-. In this connection, my attention was drawn to the copy of the house tax assessment, extract of which is Ext. 1 in the trial court's record. Said extract does show that the Nagar Palika Parishad, Rudrapur, assessed the annual rental value of the property at Rs. 8,400/-, which means the monthly rental income of the house should have been Rs. 700/- per month. The copy of the house tax assessment register prior to said period, which is Ext. A-13, shows that the annual rental income of the house in question is Rs. 3,000/-. The comparison of these documents of the municipal record, show that the house has been assessed at a higher rental value after the year 1994-95 but that by

itself does not establish that the rent payable by the tenant is Rs. 700/- per month. The burden lies on the plaintiff to prove the rate of the rent, alleged to be payable by the defendant to him. There is not a single receipt, showing that the defendant used to pay either to Dwaraka Dass or to his legal heirs, or to the plaintiff, rent at the rate of Rs. 700/- per month. In the circumstances, the trial court has committed no error of law in coming to the conclusion that rate of rent, on the date of institution of suit, payable by the defendant to the landlord was Rs. 200/- per month and not Rs. 700/- per month.

9. Plaintiff has filed this suit only on the ground of default of payment of rent for a period of more than four months. On the basis of evidence on record, the rate of rent payable by the tenant is found to be Rs. 200/- per month. And at that rate, on receiving the notice, defendant admittedly paid the rent to the plaintiff through the cheques mentioned in the plaint. It was the plaintiff, who returned the cheques and did not accept the same, as such, defendant cannot be said to have committed the default. Had it been the case that rate of rent was Rs. 700/- per month, it could have been said that the defendant has committed default but that is not the case here. The finding is otherwise. In the above circumstances, as the ground of default is not proved, the decree of ejectment cannot be passed under Section 20(1) of U.P. Act 13 of 1972.

10. For the reasons, as discussed above, this Court does not find any reason to interfere with the impugned judgment and decree in dismissal of the suit for the relief of ejectment of the defendant. The dismissal of suit for relief of ejectment is maintained. However, the landlord/plaintiff shall be entitled to withdraw the amount of rent at the rate of Rs. 200/- per month deposited by the defendant in the trial court with proportional costs. And suit to that extent shall stand decreed. But the suit shall remain dismissed for recovery of arrears of rent at the rate of Rs. 700/- per month. The revision is accordingly disposed of.

(Prafulla C. Pant, J.)

Dt: 29.08.2006
Sweta